



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/434,695	11/05/99	BARCLAY	W 2997-1-2-2

IM62/0229

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EXAMINER

WEIER, A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED:

5
02/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/434,695

Applicant(s)

Barclay

Examiner

Anthony Weier

Group Art Unit

1761



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 29-48 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 29-48 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the alternative expression "and/or" is indefinite in claim 47.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeister et al taken together with either one of Ellenbogen et al or Long.

Hagemeister et al discloses preparing a milk product (i.e. from cows) having an increased amount of omega-3 highly unsaturated fatty acid. However, Hagemeister et al is silent concerning the omega fatty acid and the use of same in the feed of the cow. However, such use in feeds is well known as taught, for example, by either one of Ellenbogen et al or Long. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as an art recognized source of omega fatty acids to be used as an alternative source for producing the products set forth in Hagemeister et al. As for the strain of organism employed, such would have been a matter of choice within the purview of one skilled in the art.

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The claims call for the particular media to be used for growing the organisms used to create said omega fatty acids (e.g. fermentation). However, the particular choice of growth media would have been within the purview of a skilled artisan, and it would have been further obvious to have employed same as a matter of choice depending, for example, on the cost of same or availability.

The claim further call for the moisture content of the feed and that same is prepared by extrusion. However, determining the amount of moisture would have been well within the purview of one having ordinary skill in the art and obvious to have attained depending on the particular consistency of the feed desired. As for the use of extrusion, same is notoriously well known in the preparation of feeds, and it would have been further obvious to have incorporated same in the preparation of the feed employed in producing the milk as called for in the instant claims.


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is (703) 308-3846.

Anthony Weier

February 28, 2000

ANTHONY J. WEIER
PRIMARY EXAMINER
GROUP 1300

1700



2/28/00